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PRE-APPEAL BRIEF REQUEST FOR REVIEW

Docket Number (Optional)	
P-9480-US1	

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to "Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" [37 CFR 1.8(a)]	**Application Number** 10/766,851	**Filed** January 30, 2004
on _____ Signature_____	**First Named Inventor** KASMIRSKY, Yehoshapat	
Typed or printed name _____	**Art Unit** 2162	**Examiner** LE, Thu N.T.

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).
        Note: No more than five (5) pages may be provided.

I am the

☐ applicant/inventor.	/Guy Yonay/
	Signature
☐ assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96)	Guy Yonay
	Typed or printed name
☑ attorney or agent of record. Registration number 52,388	646-878-0800
	Telephone number
☐ attorney or agent acting under 37 CFR 1.34.	June 16, 2009
Registration number if acting under 37 CFR 1.34 _____	Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required.
Submit multiple forms if more than one signature is required, see below*.

☐ *Total of _____ forms are submitted.	

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant(s):	KASMIRSKY, Yehoshapat, et al.	Examiner:	LE, Thu, N.T.
Serial No.:	10/766,851	Group Art Unit:	2162
Filed:	January 30, 2004		
Title:	CONTENT-BASED STORAGE MANAGEMENT		

REQUEST FOR PRE-APPEAL BRIEF REVIEW CONFERENCE

Mail Stop AF
Commissioner for Patents
P. O. Box 1450
Alexandria, VA 22313-1450

Sir:

This request for pre-appeal review conference is being filed in response to the final Office action dated March 18, 2009 issued by the United States Patent and Trademark Office in connection with the above-identified Application. A response to the final Office action is due June 18, 2009. Accordingly, this Amendment is being timely filed.

The present request for pre-appeal review is directed to a conference of Examiners to review the basis of the Office action rejecting all pending claims. It is respectfully submitted that the Examiner has failed to make a prima-facie case of obviousness. No amendments accompany this request. A notice of appeal together with the required fee is being filed herewith. Accordingly, the request is proper. Favorable reconsideration and allowance of the application is respectfully requested.

Kindly consider the following remarks:

Remarks begin on page **2** of this paper.

In the final Office action, all claims have been rejected. Applicants request pre-appeal review of the Examiner's rejection of (a) independent claims 1, 27, and 43, and (b) dependent claims 47, 51, and 55, which depend respectively therefrom. Although claims 1 and 47 are quoted and discussed below, it is understood that analogous arguments are made with respect to claims 27 and 43, and 51 and 55, respectively.

Briefly, the disclosure of the present application generally relates to a system and method for automatic data management, for example, management of security and/or customer management audio/video data, according to the content of the data. Embodiments of the invention enable data to be stored in one of a plurality of different storage options according to at least one characteristic of the data, where the at least one characteristic is based on an analysis of the content of the data.

Claim 1 recites method for managing data storage comprising: receiving a stream of audio or video data related to a communication over a communication network; automatically analyzing the content of the audio or video data to determine at least one characteristic of the audio or video content of the received stream; generating based on said content analysis of the audio or video data metadata associated with the at least one characteristic; selecting one of a plurality of storage options having different types of accessibility and/or capacity according to said generated metadata pertaining to said at least one characteristic and according to at least one rule; and placing the data into said selected storage option.

In the Office Action, the Examiner rejected independent claim 1 under 35 U.S.C. § 103(a), as being unpatentable over US Patent No. 6,542,972 (Ignatius) in view of US Patent Publication No. 2001/0040942 (Glowny). Dependent claims 47, 51, and 55 were rejected under 35 U.S.C. § 103(a), as being unpatentable over Ignatius in view of Glowny and in further view of US Patent Publication No. 2005/0008198 (Guo).

The Ignatius reference discloses:

> A computer storage system having a processor that supports operation of at least one software application in order to store selected data in the computer storage system, at least one storage media for storing the selected data, a plurality of storage policies, each having particular storage guidelines, that are available to determine how data is to be stored in the computer storage system, and a storage control that interacts with the at least one software application of the processor to determine which of the plurality of storage policies to use for storage of the selected data and that stores the selected data according to the selected storage policy. . . (Abstract, emphasis added)

> The method involves, not necessarily in this order directing a software application to store selected data; examining the selected data for particular characteristics; selecting a particular storage policy that matches the particular characteristics of the selected data; and storing the selected data on a storage media of the computer storage system according to the particular storage policy. (col. 2 lines 38-45, emphasis added)

However, the Ignatius reference does not perform any content analysis of the stored data, but rather, mere inspection of the metadata associated with the data. Specifically, the "particular characteristics" of the data being stored and on which the storage decisions are made, do not relate to or are not based on analysis of the content of the data stored. The entirety of the Ignatius reference clarifies that the characteristics are external data, such as user who created the data, size of the data, age of the data, etc.:

> The initial storage sequence selection criteria are commonly user directed override, user profile, application, file type, user network location, and available storage space or similar criteria. The storage sequence reselection criteria are criteria such as specific file usage history, file type usage history, user profile, user network relocation, available storage space, added storage media, etc. Finally, the storage sequence adaptation criteria are items such as specific file usage history, user profile, user network relocation, available storage space, added storage media, or other suitable criteria that becomes apparent to those of ordinary skill in the art and viewing the present disclosure. (col. 2 lines 3-15, emphasis added)

Thus, storage decisions may be made by the Ignatius methodology based on the above characteristics *without ever opening the data*, i.e., without reference to the content. Therefore, these characteristics are not characteristics of the content, and storage decisions are not made by automatically analyzing the content of the data.

In contrast, the present application describes analyzing content of an audio or video stream to obtain characteristics of the audio or video content, and to make storage decisions based on such content analysis. Two video examples disclosed are:

> [0052] Video analysis may optionally be performed by video analyzer 76 as follows. Video data is obtained, for example from a camera as a non-limiting example of video source 54. A frame-grabber is then preferably used to obtain at least one frame from the video data. The frame is preferably analyzed. More preferably, only a portion of the frame is stored as captured data. For example, if a video camera is used to monitor the entrance to a secure area, then optionally only those frames, or alternatively those portions of each frame, which feature a human subject near the actual entrance are of interest.

Additionally or alternatively, changes in the background of each frame may optionally be detected and tracked, as being of interest.

[0053] One example of a type of analysis which may be performed with the video data is a motion detection algorithm, which is well known in the art. Another example is face recognition algorithms, which are also well known in the art. ... The results may then optionally be stored as the captured data.

Accordingly, the Ignatius reference does not disclose every element of claim 1, including "automatically analyzing the content of the audio or video data to determine at least one characteristic of the audio or video content of the received stream" and "generating based on said content analysis of the audio or video data metadata associated with the at least one characteristic" as recited in amended claim 1.

The Examiner has also cited the Glowny reference to teach storage of video or audio data. Indeed, the Glowny is directed to monitoring and recording of telephone calls in a telephone switching environment. However, as in the Ignatius reference, the CTI metadata manipulated by the Glowny reference is not generated by analysis of the data content – nor does the Examiner expressly state that the Glowny reference discloses data content analysis for purposes of automatic data storage/management.

Claim 47 recites that analyzing the content of video data comprises analyzing the content of at least one frame of the stream of video data. The Examiner has agreed that neither Ignatius nor Glowny disclose analyzing content of a frame of video data, but rejected the claims based on these references in combination with the Guo reference.

Guo discloses a system for determining a key frame of an image sequence wherein the key frame includes the clearest image of the face of a person from the image sequence, the system included an image input means for receiving the image sequence of the person and a processing means for identifying the face of the person in each frame of the image sequence and then determining which frame is the clearest image of the persons face. (Guo, Abstract). In particular, the intended use of the Guo disclosure is to make storage, search and retrieval of video data more intuitive by indexing a key frame extracted from the data.

[0024] The system may further include a storage means to enable the key frames to be stored with or without the accompanying video. Ideally compressed video would be included together with other data such as the date and time.

[0025] The system may advantageously by employed in an ATM surveillance system so as to record details of each transaction, together with the key frame and any other relevant data. The ATM surveillance system may be triggered by detection of motion approximate the ATM machine, or alternatively by a user commencing a transaction.

Preliminarily, and critically, the Examiner has supplied no credible motivation for the combination other than hindsight, stating it "would have been obvious . . . to incorporate the method for determining a frame of an image sequence into the method for managing data storage to detect the human and identify the frames with the clear faces." This is *not* a motivation explaining why one or ordinary skill at the time of the invention would have combined the teachings to arrive at the invention, but *a mere recitation of the features of the claimed invention*. The Examiner has not made a prima facie case of obviousness.

In any event, had one been motivated to combine the Ignatius and Guo references, the result *would* have been a system that automatically stores video data based on sequence selection criteria, e.g., user directed override, user profile, application, file type, user network location, and available storage space or similar criteria (Ignatius), and upon determining storage, would store the video data together with a suitable index frame selected based on content of the data (Guo).

Thus, even combining the references, it would not have been obvious *to make storage decisions based on the content of the video data*. Thus, even combining the teachings of the Ignatius and Guo references, one of ordinary skill would not have arrived at the present claim 47. Claims 51 and 55 include analogous claim elements to claim 47, and therefore are allowable for similar reasons.

Respectfully submitted,

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